

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**GOVERNMENT ACCOUNTABILITY)
PROJECT)**

1612 K Street, N.W., Suite 1100)
Washington, D.C. 20006)

Plaintiff,)

v.)

Civil Action No.

**U.S. DEPARTMENT OF STATE)
2201 C Street, N.W.)
Washington, D.C. 20520)**

**CENTRAL INTELLIGENCE AGENCY)
Washington, D.C. 20505)**

**U.S. DEPARTMENT OF COMMERCE)
1401 Constitution Avenue, N.W.)
Washington, D.C. 20230)**

**U.S. DEPARTMENT OF)
THE TREASURY)
1500 Pennsylvania Avenue, N.W.)
Washington, D.C. 20220)**

**U.S. DEPARTMENT OF DEFENSE)
1400 Defense Pentagon)
Washington, D.C. 20301-1400)**

**U.S. DEPARTMENT OF ENERGY)
1000 Independence Avenue, S.W.)
Washington, D.C. 20585)**

Defendants.)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Government Accountability Project (“GAP”)

challenges the failure of the U.S. Department of State, the Central Intelligence Agency (“CIA”), the U.S. Department of Commerce, the U.S. Department of the Treasury, the U.S. Department of Defense, and the U.S. Department of Energy to respond to its requests for documents pertaining to the so-called “Middle East Marshall Plan” and efforts by International Peace Power & Prosperity (“IP3” or “IP3 Corporation”) and others to advance that plan. Plaintiff also challenges the failure of the Department of State to respond to its request for documents pertaining to personnel decisions concerning career Department of State employees who the Trump administration perceived as associated with the Obama administration.

2. This case seeks declaratory relief that the Department of State, the CIA, the Department of Commerce, the Department of the Treasury, the Department of Defense, and the Department of Energy are in violation of the FOIA, 5 U.S.C. § 552(a)(6)(E)(i), for failing to respond to GAP’s FOIA requests and for injunctive relief ordering all defendants to process and release to GAP immediately the requested records.

Jurisdiction and Venue

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff GAP is a non-profit, non-partisan, non-profit public interest law firm specializing in legal advocacy for government and corporate employees who use free speech rights to challenge abuses of power that betray the public interest. GAP has a 40-year history of working on behalf of government and corporate employees who expose illegality, gross waste,

mismanagement, abuse of authority, substantial or specific dangers to public health and safety, and other institutional misconduct undermining the public interest. GAP's efforts are based on the belief that professional and dedicated employees are essential to an effective democracy. To advance its mission, GAP uses in part government records made available to it under the FOIA.

5. Defendant Department of State is an agency within the meaning of 5 U.S.C. §§ 552(f) and 701. The Department of State has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA requests.

6. Defendant CIA is an agency within the meaning of 5 U.S.C. §§ 552(f) and 701. The CIA has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

7. Defendant Department of Commerce is an agency within the meaning of 5 U.S.C. §§ 552(f) and 701. The Department of Commerce has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

8. Defendant Department of the Treasury is an agency within the meaning of 5 U.S.C. §§ 552(f) and 701. The Department of the Treasury has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

9. Defendant Department of Defense is an agency within the meaning of 5 U.S.C. §§ 552(f) and 701. The Department of Defense has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

10. Defendant Department of Energy is an agency within the meaning of 5 U.S.C. §§ 552(f) and 701. The Department of Energy has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

Statutory and Regulatory Background

11. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

12. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination of which of the requested records it will release, which it will withhold and why, and the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

13. An agency's failure to respond within 20 calendar days to a FOIA request is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

14. The FOIA also requires agencies to promulgate regulations that provide for expedited processing of FOIA requests where the requester demonstrates a "compelling need" as well as "other cases determined by the agency." 5 U.S.C. § 552(a)(6)(E)(i). The FOIA defines "compelling need" to include requests "made by a person primarily engaged in disseminating information" where there is an "urgency to inform the public concerning actual or alleged Federal Government activity." *Id.* at § 552(a)(6)(E)(v)(II).

15. Agencies are required to make a determination on a request for expedition within 10 calendar days "after the date of the request." 5 U.S.C. § 552(a)(6)(E)(ii)(I).

16. An agency's failure to respond within 10 calendar days to a request for expedition is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(E)(iii).

17. Agency decisions to deny or affirm denial of a request for expedition are subject to judicial review “based on the record before the agency at the time of the determination.” 5 U.S.C. § 552(a)(6)(E)(iii).

Factual Background

Michael Flynn’s Involvement In Plans to Build Nuclear Reactors In the Middle East

18. From approximately April 2015 to June 2016, Retired Lieut. Gen. Michael Flynn, acting as an advisor for ACU Strategic Partners (“ACU”), sought to promote a plan to work with Russia to build nuclear reactors in the Middle East. Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e) for Michael Flynn (Aug. 3, 2017). The so-called “Middle East Marshall Plan” was fashioned around three critical stakeholders: the U.S., Russia, and the Gulf States. Michael Flynn’s “Middle East Marshall Plan,” Explained, *The Moscow Project*, Apr. 6, 2018, available at <https://themoscowproject.org/explainers/seychelles-uae-george-nader-michael-flynn-middle-east-marshall-plan/> (“*Moscow Project Explainer*”).

19. Three principal rationales of the Middle East Marshall Plan motivated these parties: (1) the plan would provide an excuse for the United States to remove sanctions against Russia and Russian businesses; (2) the plan would reap profits of potentially hundreds of billions of dollars; and (3) the plan would serve a broader economic policy and geostrategic objective for the Middle East. *Moscow Project Explainer*.

20. Toward that end, Flynn traveled to the Middle East in June 2015, House Committee on Oversight and Reform, Interim Staff Report, Whistleblowers Raise Grave Concerns with Trump Administration’s Efforts to Transfer Sensitive Nuclear Technology to Saudi Arabia, Feb. 2019, available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Trump%20Saudi%20Nuclear%20Report%20-%202-19-2019.pdf> (“*2019 Interim*

House Report”), where, according to his congressional testimony before the House Committee on Foreign Affairs Subcommittee on the Middle East and North Africa, nuclear power in the Middle East was “one of the big issues that came up.” House Committee on Foreign Affairs Subcommittee on Middle East and North Africa, *Hearing on Iran’s Missile Defense Capabilities*, 114th Cong. (June 10, 2015). Although he was an advisor to ACU at the time, Flynn concealed that fact from the House Subcommittee, failed to report this trip on his security clearance renewal application in January 2016, and concealed the trip from investigators who were conducting a background check on him prior to his appointment as National Security Advisor. *Timeline, General Michael Flynn’s Efforts to Lift Sanctions and Promote a Joint Project with Russia to Build Nuclear Reactors in the Middle East*, available at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/Timeline%20of%20Events%20with%20Flynn.pdf> (“2017 Oversight Committee Timeline”).

21. Later that month, Flynn also travelled to Egypt and Israel to promote ACU’s nuclear plan. As with his earlier trip, Flynn did not report this trip on his January 2016 security clearance renewal application and concealed it from background check investigators. *2017 Oversight Committee Timeline*. During that trip Flynn urged Egyptian officials to work with a U.S. firm rather than Russia to build nuclear reactors and sought to placate Israeli concerns about enemy states obtaining nuclear materials. Isaac Arnsdorf, *White House May Share Nuclear Power Technology With Saudi Arabia*, *ProPublica*, Nov. 29, 2017, available at <https://www.propublica.org/article/white-house-may-share-nuclear-power-technology-with-saudi-arabia>; Michael Kranish, Tom Hamburger, and Carol D. Leonnig, *Michael Flynn’s role in Mideast nuclear project could compound legal issues*, *Washington Post*, Nov. 27, 2017, available at <https://www.washingtonpost.com/politics/michael-flynnns-role-in-middle-eastern-nuclear-project->

[could-compound-legal-issues/2017/11/26/51ce7ec8-ce18-11e7-81bc-c55a220c8cbe_story.html?utm_term=.a1afee42e27a](https://www.washingtonpost.com/news/energy-environment/wp/2017/11/26/51ce7ec8-ce18-11e7-81bc-c55a220c8cbe_story.html?utm_term=.a1afee42e27a).

22. In addition to these trips to promote ACU's nuclear power plan, Flynn took other trips that he either failed to include on his January 2016 security clearance renewal application or to report on that form the source of money for these trips. These included an August 19, 2015 speaking engagement with a Pentagon-blacklisted Russian charter cargo airline, Volga-Dnepr Airlines; a speaking engagement for Kaspersky Government Security Solutions, Inc., a Russian cybersecurity corporation; and a Moscow trip to attend a gala with Russian President Vladimir Putin. *2017 Oversight Committee Timeline*.

23. Despite these numerous contacts with foreign governments and foreign government officials, Flynn claimed in an interview with security clearance renewal investigators on February 11, 2016 that over the past seven years he had no such contacts and he also claimed to have had "only insubstantial contact with foreign nationals." *2017 Oversight Committee Timeline*.

Flynn's Work During Campaign and Transition

24. In February 2016, Flynn began serving as an informal foreign policy adviser to then-candidate Donald Trump. He continued to promote plans to build nuclear reactors in the Middle East throughout this time as well as during the transition.

25. In 2016, former ACU advisor Retired Rear Adm. Michael Hewitt co-founded a new company, International Peace Power & Prosperity. Flynn joined him at IP3 as an advisor. Like ACU, IP3 also was promoting a plan to build nuclear reactors in the Middle East. *2017 Oversight Committee Timeline*; Kranish, Hamburger, and Leonnig, *Washington Post*, Nov. 27, 2017; Arnsdorf, *ProPublica*, Nov. 29, 2017. In August 2016, the company produced a

PowerPoint presentation labeled “Presentation to His Majesty King Salman Bin Abdul Aziz” that included a mention of Flynn on a page titled “IPC/IronBridge: Formidable US Leadership.”

Kranish, Hamburger, and Leonnig, *Washington Post*, Nov. 27, 2017.

26. On September 20, 2016, Flynn met with Rep. Dana Rohrabacher and others to discuss building nuclear power plants in the Middle East. *2017 Oversight Committee Timeline*.

27. Following Donald Trump’s election and during the transition, in a briefing memo circulated by ACU entitled “TRUMP/PUTIN ME Marshall plan CONCEPT,” ACU claimed that “ACU team members [are] highly engaged with key Trump Admin. members.” *2017 Oversight Committee Timeline*. According to the document, ACU had secured the cooperation of a Ukrainian nuclear company, which would “require Ukraine to support lifting US and EU sanctions on Russia in line with the highest foreign policy priority of the incoming Trump administration.” *Id.* The memo further claimed that “Key players in both Saudi and Qatar” had been “briefed” and were “in go status pending Trump/Putin co-operation.” *Id.*

28. On November 10, 2016, President Barack Obama met with President-elect Trump. At the meeting, President Obama reportedly warned President-elect Trump against hiring Flynn as National Security Advisor. Kristen Welker, Dafna Linzer, and Ken Dilanian, Obama Warned Trump Against Hiring Mike Flynn, Say Officials, *NBC News*, May 8, 2017, available at <https://www.nbcnews.com/news/us-news/obama-warned-trump-against-hiring-mike-flynn-say-officials-n756316>. Nevertheless, on November 18, 2016, President-elect Trump named Flynn as his pick for the position. Brian Bender, Trump names Mike Flynn national security adviser, *Politico*, Nov. 17, 2016, available at <https://www.politico.com/story/2016/11/michael-flynn-national-security-adviser-231591>.

29. On November 18, 2016, while Flynn was being vetted to be National Security Advisor, Special Advisor to the Joint Chiefs of Staff Reuben Sorensen described the pending appointment in an email to ACU managing partner Alex Copson as “a big win for the ACU project.” *2017 Oversight Committee Timeline*.

30. During the transition, Flynn had a number of meetings with foreign officials. These included a meeting on December 1, 2016, with then-Russian Ambassador to the United States Sergey Kislyak at Trump Tower along with presidential son-in-law Jared Kushner, *2017 Oversight Committee Timeline*; a three-hour December 2016 meeting along with Kushner and then-Chief Strategist and Counselor to the President Steve Bannon with the Crown Prince of Abu Dhabi Sheikh Mohammed bin Zayed al-Nahyan, also at Trump Tower, *id.*, *Moscow Project Explainer*; and a January 5, 2017 meeting along with Kushner and Bannon with Jordan’s King Abdullah II at which they reportedly discussed the nuclear proposal. *2017 Oversight Committee Timeline*; Jason Leopold, Chris McDaniel, and Anthony Cormier, Trump Advisers Secretly Met With Jordan’s King While One Was Pushing A Huge Nuclear Power Deal, *BuzzFeed*, Sept. 15, 2017, available at <https://www.buzzfeednews.com/article/jasonleopold/trump-advisors-secretly-met-with-jordans-king-while-one-was>. Flynn was also photographed with former Reagan National Security Adviser Bud McFarlane, who also is affiliated with ACU and IP3, in the Trump Tower lobby on December 5, 2016. *Moscow Project Explainer*.

31. In addition, on December 29, 2016, Flynn had at least one telephone call with Ambassador Kislyak during which they discussed sanctions against Russia. *Moscow Project Explainer*; *2017 Oversight Committee Timeline*.

Thomas Barrack's Involvement in Nuclear Reactor Plans

32. In early January 2017, Flynn “talked favorably” about the nuclear proposal with Thomas Barrack, Jr., a businessman and long-time Trump confidante, David D. Kirkpatrick, Who Is Behind Trump’s Links to Arab Princes? A Billionaire Friend, *New York Times*, June 13, 2018, available at <https://www.nytimes.com/2018/06/13/world/middleeast/trump-tom-barrack-saudi.html>, who was heading the Trump Inauguration Committee. *Moscow Project Explainer*; *2017 Oversight Committee Timeline*. Following up on this conversation, Barrack had a series of conversations with former colleagues of Flynn at IP3 and with Kushner. *2017 Oversight Committee Timeline*. At that time, Barrack had extensive business contacts in the Middle East. *Id.*; Kranish, Hamburger, and Leonnig, *Washington Post*, Nov. 27, 2017; Kirkpatrick, *New York Times*, June 13, 2018. Barrack also considered buying a stake in Westinghouse Electric Company, a producer of nuclear reactors. Arnsdorf, *ProPublica*, Nov. 29, 2017.

33. During the presidential campaign, Barrack wrote a series of white papers that proposed a new approach of economic cooperation with the Middle East. Arnsdorf, *ProPublica*, Nov. 29, 2017. When McFarlane and his IP3 colleagues discussed their nuclear power plan with him, Barrack described himself as “like a kid in a candy shop – these guys were all generals and admirals . . . They found an advocate in me in saying I was keen on trying to establish a realignment of U.S. business interests with the Gulf’s business interests.” *Id.*

34. Barrack also served as a link between President Trump, Jared Kushner, and top U.A.E. and Saudi officials based on contacts that Barrack forged through decades of business in the Persian Gulf. Kirkpatrick, *New York Times*, June 13, 2018. U.A.E. Ambassador Yousef al-Otaiba credited Barrack for his relationship with Kushner, which the ambassador described as “extremely helpful, for both sides I think.” *Id.* Barrack responded in an email, “It all started with

you and JK and I so congratulations on a great beginning,” referring to Jared Kushner by his initials. *Id.*

35. Colony NorthStar, the real estate investment firm Barrack founded, also sought to exploit its connections to President Trump and foreign dignitaries from the early days of the Trump administration. A confidential February 2017 memo reportedly authored by Rick Gates describes how Colony had “developed a plan to profit off its connections to the incoming administration and foreign dignitaries[.]” Confidential Memo: Company of Trump Inaugural Chair Sought to Profit from Connection to Administration, Foreigners, *WNYC Studios*, Feb. 5, 2019, available at <https://www.wnystudios.org/story/confidential-memo-company-trump-inaugural-chair-sought-profit-connection-administration-foreigners>. According to the memo, Colony already had established “a pipeline of potential projects” and had made contact with “several of the key agencies that will direct those efforts.” *Strategic Plan for Colony NorthStar, Inc.*, Colony NorthStar, Feb. 2017, available at www.documentcloud.org/documents/5726057-Colony-memo-February-2017.html.

36. As part of Colony’s efforts, Barrack hosted a dinner during the inaugural week that included among others an Emirati property developer, the U.A.E. ambassador, and the U.S. ambassadors of Qatar and Saudi Arabia. Justin Elliott, Confidential Memo: Company of Trump Inaugural Chair Sought to Profit From Connections to Administration, Foreigners, *ProPublica*, Feb. 5, 2019, available at <https://www.propublica.org/article/trump-inc-podcast-tom-barrack-colony-company-of-trump-inaugural-chair-sought-to-profit>.

37. The Trump Inauguration Committee currently is under criminal investigation, and a recently disclosed subpoena suggests the U.S. Attorney’s Office for the Southern District of New York is investigating conduct ranging from false statements to money laundering. Andrew

Prokop, The investigation into Trump's inauguration money looks quite serious, *Vox*, Feb. 5, 2019, available at <https://www.vox.com/2019/2/5/18211600/trump-inauguration-investigation-subpoena-sdny>.

Flynn and Derek Harvey Push Reactor Plan at National Security Council

38. On January 20, 2017, while newly sworn in President Trump was giving his inaugural address, Flynn sent ACU's Alex Copson a text message indicating the nuclear project was "good to go" and directing his business colleagues to move forward. *2017 Oversight Committee Timeline*. Reportedly Copson stated that "Mike has been putting everything in place for us," and further that "[t]his is going to make a lot of very wealthy people." *Id.* Copson also claimed that Flynn was ensuring that sanctions would be "ripped up" to allow money to flow into the nuclear power plan. *Id.*

39. Just days later Flynn was installed as the National Security Advisor. In an interview with the FBI, Flynn "falsely stated that he did not ask" Ambassador Kislyak "to refrain from escalating the situation in response to sanctions that the United States had imposed against Russia." He also "falsely stated that he did not remember a follow-up conversation in which the Russian Ambassador stated that Russia had chosen to moderate its response to those sanctions as a rule of FLYNN's request." *United States v. Flynn*, Statement of the Offense (D.D.C. Civil Action No. 17-00232) (Dec. 1, 2017).

40. Flynn brought Retired Army Col. Derek Harvey with him to the National Security Council ("NSC"), and the two pushed for approval of IP3's nuclear plan. During the first week of the Trump administration, Harvey stated at a meeting that Flynn "had told him to develop a regional economic and energy plan for the Middle East" and that Flynn wanted Harvey to take the lead rather than the NSC office that handled energy and economic issues. Christopher S.

Stewart and Rob Barry, Mike Flynn’s Promotion of Nuclear-Plant Project Went Deep Into the White House, *Wall Street Journal*, Nov. 28, 2017, available at <https://www.wsj.com/articles/flynns-promotion-of-nuclear-plant-project-went-deep-into-the-white-house-1511901009>. Harvey also reportedly “met with a private-sector backer of the nuclear plan.” *Id.*

41. In response, NSC staff explained to Harvey that two offices within the NSC were responsible for economic and energy issues and that those offices and subject matter experts typically worked together to prepare and vet proposals of the kind Harvey was outlining. *2019 Interim House Report*. Harvey refused to obtain that input, instead asserting that Flynn had directed him “to take charge of the new ‘regional economic and energy plan’ for the Middle East[.]” *Id.*

42. Just days later, IP3’s Robert McFarlane emailed documents to Flynn, which included an outline of the Middle East nuclear plan and “a draft memo for the president to sign authorizing the project” and instructing cabinet secretaries to implement it. Arnsdorf, *ProPublica*, Nov. 29, 2017; *2017 Oversight Committee Timeline*; Stewart and Barry, *Wall Street Journal*, Nov. 28, 2017. Reportedly Flynn passed these documents along to NSC staff and instructed them to “[p]repare a package for the president.” Arnsdorf, *ProPublica*, Nov. 29, 2017; Stewart and Barry, *Wall Street Journal*, Nov. 28, 2017. According to two U.S. officials, the policy document to be prepared for the president’s approval “proposed working with Russia on a nuclear reactor project.” *2017 Oversight Committee Timeline*.

43. The following week, Harvey met with representatives of IP3, including co-founders Ret. Gen. John M. Keane and McFarlane, in his White House office. *2019 Interim House Report*. Immediately following that meeting, Harvey directed NSC staff to add to the briefing package for President Trump’s upcoming call with King Salman of Saudi Arabia a “plan

for 40 nuclear power plants,” describing this as the “‘energy plan’ that had been developed and approved by General Flynn during the presidential transition.” *Id.*

*NSC Officials Raise Concerns About Nuclear Reactor Plan
and Conflicts of Interest*

44. NSC staff raised concerns with Harvey that any plan to transfer nuclear technology must comply with Section 123 of the Atomic Energy Act, which requires consultation with experts at the NSC, Department of State, Department of Defense, and Department of Energy. *2019 Interim House Report*. Nevertheless, Harvey insisted that decision already had been made during the transition. *Id.*

45. NSC staff became alarmed when Flynn told them to put the proposal together to present to the president for his signature. Arnsdorf, *ProPublica*, Nov. 29, 2017. This directive flowed from emails Flynn and Deputy National Security Advisor K.T. McFarland received on January 28, 2017 from IP3’s McFarlane entitled “Launching the Marshall Plan for the Middle East.” *2019 Interim House Report*. The emails included a draft cover memorandum to President Trump from Flynn and a draft memorandum for the president’s signature directing agency heads to support Barrack in implementing the IP3 plan. *Id.* Flynn forwarded these documents to White House staff with the directive to prepare a package for the president. *Id.*

46. Reportedly, staff brought this matter to the attention of NSC lawyers, expressing concern that such a sensitive proposal was to be presented to the president without following the normal course of consulting with government experts about its legal and practical implications. *Interim House Report*; Arnsdorf, *ProPublica*, Nov. 29, 2017. A former CIA analyst and NSC spokesperson explained: “Circumventing that process has the ability not only to invite decisions that aren’t fully vetted but that are potentially unwise and have the potential to put our interests and our people at risk.” Arnsdorf, *ProPublica*, Nov. 29, 2017.

47. A legal advisor to the NSC also had concerns that Flynn had a conflict of interest and urged Flynn to recuse himself from discussions about the Middle East nuclear project. *2017 Oversight Committee Timeline*. Executive branch officials are prohibited from participating in matters in which they have a personal financial interest, *see* 18 U.S.C. § 208, and also may not participate in a particular matter involving specific parties the official has been employed with or by in the preceding year. 5 C.F.R. § 2635.502. Soon thereafter, NSC lawyers directed members of the council to stop working on the project because of Flynn's prior work with IP3. Stewart and Barry, *Wall Street Journal*, Nov. 28, 2017. NSC lawyers also directed Flynn not to attend a follow-up meeting with McFarlane, which Harvey attended instead. *Id.*

Harvey Continues Pushing For Approval of IP3 Nuclear Plan

48. Even in the face of these concerns, Harvey, as the NSC's senior director for the Middle East, continued discussions with Barrack and his representative, Rick Gates, about the IP3 nuclear proposal. Arnsdorf, *ProPublica*, Nov. 29, 2017; *2017 Oversight Committee Timeline*; *Moscow Project Explainer*. Both Barrack and Gates were seeking investment ideas centered on the Trump administration's policy in the Middle East. *Id.* Barrack also discussed the project with Jared Kushner. Stewart and Barry, *Wall Street Journal*, Nov. 28, 2017.

49. After Flynn was fired as National Security Advisor on February 13, 2017, Harvey continued to push NSC staff to work on the nuclear plan. Stewart and Barry, *Wall Street Journal*, Nov. 28, 2017. Harvey also continued to have contact with Flynn, telling NSC staff during a March 2, 2017 meeting that he spoke with Flynn "every night." *2019 Interim House Report*.

50. NSC staff advised incoming National Security Advisor General H.R. McMaster about their concerns regarding Harvey, including his ongoing contacts with Flynn and his

continued work on the IP3 plan. *Interim House Report*. NSC’s legal counsel promised to investigate. *Id.*

51. In a March 14, 2017 Oval Office meeting, President Trump and Kushner discussed with Saudi Deputy Crown Prince Mohammed bin Salman “opportunities for U.S. companies to invest in Saudi Arabia.” Yara Bayoumy, Jeff Mason, and Warren Strobel, Saudi deputy crown prince, Trump meeting a ‘turning point’: Saudi advisor, *Reuters*, March 14, 2017, available at www.reuters.com/article/us-saudi-usa-idUSKBN16L2CT. Harvey submitted to NSC staff a draft readout of the meeting that referenced “a new United States-Saudi program . . . in energy, industry, infrastructure, and technology worth potentially more than \$200 billion in direct and indirect investments within the next four years.” *2019 Interim House Report*. Career NSC staff knew nothing about the referenced program. *Id.*

52. On March 21, 2017, Harvey and Gates called Barrack to discuss the Middle East Marshall Plan. *2019 Interim House Report*. According to an NSC staffer who also was present for the call, Harvey continued to promote the IP3 plan “so that Jared Kushner can present it to the President for approval.” *Id.*

53. On March 27, 2017, McMaster informed NSC staff they should not work on the Middle East Marshall Plan anymore. *2019 Interim House Report*.

54. In July 2017, after clashes with NSC staff, Harvey was dismissed. Stewart and Barry, *Wall Street Journal*, Nov. 28, 2017. Harvey went on to serve as senior advisor to Rep. Devin Nunes, then-Chair of the House Permanent Select Committee on Intelligence. *Id.*

55. After Flynn’s termination, his former business colleagues also continued to lobby federal agencies for the nuclear plan and met with Kushner. *2017 Oversight Committee Timeline*.

56. On December 6, 2017, then-Ranking Member Elijah E. Cummings of the House Oversight Committee sent a letter to then-Committee Chair Trey Gowdy that stated in relevant part: “Our Committee has credible allegations that President Trump’s National Security Advisor sought to manipulate the course of international nuclear policy for the financial gain of his former business partners.” The letter is available at <https://www.nytimes.com/interactive/2017/12/06/us/politics/document-Gowdy-Flynn-Letter.html>.

Jared Kushner’s Links to IP3’s Nuclear Plan

57. On January 4, 2018, Brookfield Business Partners, a subsidiary of Canadian Brookfield Asset Management Inc., announced it planned to acquire Westinghouse Electric Co., a bankrupt nuclear services company owned by Toshiba Corp. Tom Hals and Jessica DiNapoli, Brookfield Business Partners to buy Westinghouse for \$4.6 billion, *Reuters*, Jan. 4, 2018, available at <https://www.reuters.com/article/us-westinghouse-m-a-brookfieldbusinesspa/brookfield-business-partners-to-buy-westinghouse-for-4-6-billion-idUSKBN1ET1MQ>. The Qatari government, through the Qatar Investment Authority, is the second largest investor in Brookfield’s real estate arm, Brookfield Property Partners. Charles V. Bagli and Jesse Drucker, Kushners Near Deal With Qatar-Linked Company for Troubled Tower, *New York Times*, May 17, 2018, available at <https://www.nytimes.com/2018/05/07/nyregion/kushner-deal-qatar-666-5th.html>. Westinghouse was one of the leading suppliers of nuclear fuel and part of a consortium bidding to provide Saudi Arabia with nuclear power. Hals and DeNapoli, *Reuters*, Jan. 4, 2018. The acquisition required regulatory approval as well as approval from the U.S. Bankruptcy Court. *Id.*

58. In May 2018, it was reported that Kushner Companies, headed by Jared Kushner’s father Charles Kushner, was in “advanced talks” with Brookfield Asset Management

over the Kushner-owned property at 666 Fifth Avenue in New York. Bagli and Drucker, *New York Times*, May 17, 2018. At that point the Kushners owed \$80 million on a high-interest loan on the property and had a \$1.2 billion mortgage payment on the property due in early 2019. Timothy L. O'Brien, Qatar and the Kushners: What to Watch For, *Bloomberg*, May 17, 2018, available at <https://www.bloomberg.com/opinion/articles/2018-05-17/qatar-the-kushners-and-666-fifth-avenue>. Even though by 2018 Jared Kushner had sold his stake in the building to a trust controlled by his mother, concerns had been raised about Kushner's dual roles as both a White House point person on Middle East issues and a stakeholder in Kushner Companies. *Id.*

59. The previous year, Jared Kushner had unsuccessfully lobbied the Qatari government to invest in the 666 Fifth Avenue building. O'Brien, *Bloomberg*, May 17, 2018. This followed failed negotiations in 2016 with Anbang, a large Chinese insurance, financial services, and banking company, that collapsed among criticism over Jared Kushner's White House and family business roles. Bagli and Drucker, *New York Times*, May 17, 2018. Reportedly Anbang pulled out of any deal with the Kushners because of the "growing controversy about the conflict of interest inherent to a company with ties to the Chinese government going into (big) business with the family of a senior adviser to the American one." Eric Levitz, Kushner Sought \$500 Million Bailout From Top Qatari Investor: Report, *New York Magazine*, July 10, 2017, available at <http://nymag.com/intelligencer/2017/07/kushner-sought-usd500-million-investment-from-qatar-report.html>.

60. In June 2017, one month after Kushner's talks with Qatar regarding 666 Fifth Avenue failed, he reportedly supported a blockade of Qatar originated by Saudi Arabia and the U.A.E. Levitz, *New York Magazine*, July 10, 2017. This caused public speculation over whether Kushner was using the blockade to force Qatar to invest in the building or to intimidate other

potential investors. Bess Levin, Did Jared Kushner Punish Qatar Because It Wouldn't Lend His Family Money?, *Vanity Fair*, March 2, 2018, available at <https://www.vanityfair.com/news/2018/03/did-jared-kushner-punish-qatar-because-it-wouldnt-lend-his-family-money>.

61. On August 1, 2018, Brookfield Business Partners completed its acquisition of 100 percent of Westinghouse. *Business Wire*, Aug. 1, 2018, available at <https://www.businesswire.com/news/home/20180801005918/en/Westinghouse-Sale-Brookfield-Complete>.

62. Two days later, on August 3, 2018, Brookfield Asset Management Inc. reached a deal with Kushner Companies to lease the significantly over-leveraged building at 666 Fifth Avenue for 99 years. Scott Deveau, Kushners Unload 666 Fifth Ave. to Brookfield in 99-Year Lease, *Bloomberg*, Aug. 3, 2018, available at <https://www.bloomberg.com/news/articles/2018-08-03/brookfield-acquires-99-year-lease-on-nyc-tower-from-kushner-cos>. Under the deal, Brookfield would give Kushner Companies an upfront sum of money to allow the company to pay off its outstanding debt on the property. *Id.*

Secretary Perry and Others Continue to Push IP3 Plan

63. In May 2018, Energy Secretary Rick Perry, in testimony before the House Science, Space and Technology Committee, testified that the Trump administration was considering allowing Saudi Arabia to enrich and reprocess uranium as part of a nuclear cooperation agreement, referred to as a “123 Agreement” under Section 123 of the Atomic Energy Act, which requires countries that share American nuclear technology and fuel to take steps to prevent them from being used by those countries in weapons. Josh Siegel, Rick Perry: Saudi Arabia should sign nuclear energy deal with US, *Washington Examiner*, May 9, 2018, available at <https://www.washingtonexaminer.com/policy/energy/rick-perry-saudi-arabia-should-sign-nuclear-energy-deal-with-us>; Leopold, McDaniel and Cormier, *BuzzFeed*, Sept. 15,

2017. According to Secretary Perry, in exchange the U.S. would permit Westinghouse and other American companies to build nuclear reactors in Saudi Arabia. Siegel, *Washington Examiner*, May 9, 2018.

64. In September 2018, Secretary Perry stated publicly that the United States “is close to working with Saudi Arabia on building nuclear reactors,” but non-proliferation standards “remain a challenge.” Timothy Gardner, U.S. stresses safety in talks on nuclear power with Saudi Arabia: Perry, *Reuters*, Sept. 26, 2018, available at <https://www.reuters.com/article/us-usa-saudi-nuclear/u-s-stresses-safety-in-talks-on-nuclear-power-with-saudi-arabia-perry-idUSKCN1M707W>. Reportedly, the Trump administration, for its part, “hopes Saudi Arabia will buy nuclear power technology from U.S. companies, including Westinghouse[.]” *Id.*

65. After the murder of journalist Jamal Khashoggi, a bipartisan group in Congress called on President Trump to break off talks with Saudi Arabia over a potential civil nuclear agreement. David Gattie, What Khashoggi killing means for US-Saudi nuclear power policy, *The Hill*, Nov. 14, 2018, available at [https://thehill.com/opinion/energy-environment-416728-what-khashoggi-killing-means-for-us-saudi-nuclear-power-policy](https://thehill.com/opinion/energy-environment/416728-what-khashoggi-killing-means-for-us-saudi-nuclear-power-policy). Nevertheless, in December 2018, it was reported that Secretary Perry was “pressing ahead with efforts to strike a deal that would allow U.S. companies such as Westinghouse Electric Co. build [sic] nuclear reactors in Saudi Arabia[.]” Terrence Dopp, Perry Pursues Reactor Deal Amid Congressional Ire at Saudis, *Bloomberg*, Dec. 10, 2018, available at <https://www.bloomberg.com/news/articles/2018-12-10/perry-pursues-reactor-deal-amid-congressional-ire-at-saudis>. At that time, Secretary Perry had “wrapped up a round of talks with Saudi Minister of Energy Khalid Al-Falih and the CEO of state-run Saudi Aramco[.]” *Id.*

66. Reportedly, Secretary Perry led an interagency delegation to Riyadh in December 2018 to discuss a potential nuclear power deal with Saudi Arabia. *2019 Interim House Report*. Secretary Perry is reported to have stressed to the Saudis the importance of being “perceived to be strong on non-proliferation.” *Id.*

67. As recently as January 10, 2019, the Saudi energy minister stated that “Saudi Arabia aims to work closely with the United States on its plans to build nuclear power generation capacity,” and “wants Washington to be ‘part and parcel’ of Saudi Arabia’s nuclear program[.]” Rania El Gamal, Saudi to work closely with U.S. on nuclear power plans: Falih, *Reuters*, Jan. 9, 2019, available at <https://www.reuters.com/article/us-saudi-oil-nuclear/saudi-to-work-closely-with-u-s-on-nuclear-power-plans-falih-idUSKCN1P3210>.

68. On February 12, 2019, U.S. nuclear energy developers, including Westinghouse, met with President Trump to seek assistance in winning contracts to build power plants in the Middle East and other countries. Jack Keane, IP3’s co-founder, initiated the meeting. Jennifer A. Diouhy, Ari Natter, and Jennifer Jacobs, CEOs Ask Trump to Help Them Sell Nuclear Power Plants Overseas, *Bloomberg*, Feb. 12, 2018, available at <https://www.bloomberg.com/news/articles/2019-02-12/trump-said-to-meet-with-nuclear-developers-looking-globally>. Discussions included efforts to secure Section 123 Agreements with Saudi Arabia and Jordan that would allow U.S. nuclear power companies to share their technology with those countries and others in the Middle East. *Id.* A White House official described the meeting as being led by Keane, with whom “the president talks . . . periodically.” *2019 Interim House Report*.

69. On February 19, 2019, the House Committee on Oversight and Reform released an interim staff report about “efforts inside the White House to rush the transfer of highly sensitive U.S. nuclear technology to Saudi Arabia in potential violation of the Atomic Energy

Act and without review by Congress as required by law – efforts that may be ongoing to this day.” *2019 Interim House Report*. The report states that multiple whistleblowers came forward to express “significant concerns about the potential procedural and legal violations connected with rushing through a plan to transfer nuclear technology to Saudi Arabia.” *Id.*

FOIA Requests at Issue

Department of State FOIAs

70. On August 21, 2018, GAP submitted a FOIA request by email to the Department of State seeking documents and communications from January 20, 2017 to the present regarding: (1) civil nuclear cooperation with Middle Eastern countries, most notably Saudi Arabia; (2) the Middle East Marshall Plan; (3) negotiation of a U.S.-Saudi “123” Civil Nuclear Cooperation Agreement; (4) the IP3 Corporation and its proposal for nuclear and cyber cooperation with various Middle Eastern countries; and (5) Westinghouse, including its March 2017 bankruptcy and the subsequent policy response of the U.S. Government (hereinafter “State Department FOIA 1”).

71. To help focus the Department of State’s search for responsive records, GAP provided four categories of additional information. First, GAP identified the following agencies as likely to have corresponded with the Department of State on the subjects of GAP’s request: the CIA, the Department of Commerce, the Department of Defense, the Department of Energy, the Department of the Treasury, and the White House, including, *inter alia*, the National Security Council.

72. Second, GAP identified 18 White House staff members likely to have been referenced in the requested documents and communications: (1) former NSC Executive Secretary Megan Badasch; (2) former NSC Senior Director Michael Bell; (3) former NSC Senior

Advisor Caroline Berson; (4) NSC Legal Counsel John Eisenberg; (5) NSC Director Mark Eshbaugh; (6) former National Security Advisor Michael Flynn; (7) former NSC Senior Director Chris Ford; (8) former NSC Senior Director Andrea Hall; (9) former NSC Senior Director Derek Harvey; (10) former NSC Chief of Staff Keith Kellogg; (11) Senior Advisor to the President Jared Kushner; (12) former Deputy National Security Advisor K.T. McFarland; (13) former National Security Advisor H.R. McMaster; (14) former NSC Gulf Director Sean Misko; (15) former NSC Nonproliferation Director Sean Oehlbert; (16) former Deputy National Security Director Dina Powell; (17) former Deputy National Security Advisor Ricky Waddell; and (18) former NSC Ethics Counsel Marguerite Walter.

73. Third, GAP identified the following individuals at the IP3 Corporation for which the Department of State would have correspondence: (1) Keith Alexander; (2) Michael (“Mike”) Hewitt; (3) Jack Keane; (4) Robert (“Bud”) McFarlane; (5) Stuart Solomon; and (6) Frances Fragos Townsend.

74. Fourth, GAP identified the following Department of State individuals or categories of individuals most likely to have responsive information in their emails, archived documents, or other stored files: (1) Secretary Mike Pompeo; (2) former Secretary Rex Tillerson; (3) former Chief of Staff Margaret Peterlin; (4) former Deputy Chief of Staff Christine Ciccone; (5) Policy Planning Director Brian Hook; (6) Deputy Policy Planning Director David Tessler; (7) Deputy Policy Planning Director Edward Lacey; (8) Policy Planning Staff Member Mark Eshbaugh; (9) Jennifer Newstead, Office of the Legal Advisor; (10) Kathleen Hook, Office of the Legal Advisor; (11) former Under Secretary of State for Political Affairs Thomas Shannon; (12) former Chief of State to the Under Secretary Tim Davis; (13) former Chief of Staff to the Under Secretary Samantha Yoder; (14) former Special Assistant to the Under Secretary Nate

Swanson; (15) Deputy Secretary John Sullivan; (16) Chief of Staff to the Deputy Secretary Gregory LoGerfo; (17) Chief of Staff to the Deputy Secretary Yuri Kim; (18) Assistant Secretary for International Security and Nonproliferation Christopher Ford; (19) all other personnel in the Bureau of International Security and Nonproliferation; (20) Under Secretary for Arms Control Andrea Thomson; (21) the entire staff of the Under Secretary for Arms Control; (22) former Acting Bureau of Near Eastern Affairs (“NEA”) Assistant Secretary Stuart Jones; (23) Acting NEA Assistant Secretary/Senior Bureau Official David Satterfield; (24) NEA Deputy Assistant Secretary of State Timothy Lenderking; (25) former U.S. Ambassador to Jordan Alice Wells; (26) former U.S. Charge-de-Affaires to Jordan Henry Woster; (27) Charge de-Affaires and Deputy Chief of Mission to Saudi Arabia Christopher Henzel; (28) former Political Counselor in Embassy Riyadh John Godfrey; (29) the entire economic and commercial section staff of Embassy Riyadh; and (30) any other State Department employees involved in negotiations or discussions with Saudi Arabia regarding a potential 123 Nuclear Agreement.

75. GAP also sought a waiver of fees associated with processing its request on the basis that disclosure of the requested documents is in the public interest as it would, *inter alia*, significantly enhance the public’s understanding of the government’s operations with respect to energy and foreign policy issues in the Middle East. GAP explained how each of the criteria in the Department of State’s regulation concerning a fee waiver, 22 C.F.R. § 171.16, are satisfied.

76. By letter dated September 19, 2018, the Department of State acknowledged receipt of GAP’s State Department FOIA 1 and advised the request would be handled as quickly as possible.

77. To date, GAP has not received any further communications from the Department of State regarding this FOIA request.

78. By email dated September 11, 2018, GAP submitted a second FOIA request to the Department of State (“hereinafter State FOIA 2”) seeking documents and communications for the period January 20, 2017 to the present on the following topics: (1) personnel decisions about career Department of State employees perceived to have been associated with the Obama administration; (2) the closure of various special envoy offices and discussions related to the future disposition of personnel who served in those offices; (3) the Department of State’s “FOIA Surge” and “FOIA backlog, including eight specified aspects of those surges”; (4) decisions on Department of State and U.S. Agency for International Development (“USAID”) personnel for whom the White House and Office of the President requested be reassigned or terminated; (5) decisions on Department of State personnel at the ambassadorial rank deemed to have “clocked out” and subsequently terminated; (6) Department of State personnel sent to the National Defense University, including former NEA Deputy Assistant Secretary of State for Syria Michael Ratney; (7) former Department of State employee Sahar Nowrouzzadeh; (8) former Department of State employee Ian Moss; (9) Department of State employee Lawrence Bartlett; (10) downsizing the Department of State, including the “hiring freeze,” reductions in force, and buyouts; (11) the origins of the “Redesign” and “impact Initiative,” including the goals of Secretary Tillerson and his immediate staff for these efforts, especially as they pertain to reducing the Department of State’s workforce.

79. In addition, GAP sought Department of State communications with the following individuals: (1) former NSC Chief of Staff and Executive Secretary Keith Kellogg; (2) former NSC Deputy Executive Secretary Megan Badasch; (3) former National Security Advisor H.R. McMaster; (4) former Deputy National Security Advisor K.T. McFarland; (5) former Deputy National Security Advisor Dina Powell; (6) former Deputy National Security Advisor Ricky

Waddell; (7) former Homeland Security Advisor Thomas Bossert; (8) the director of the White House/Presidential Personnel Office and its staff; (9) the Office of the Vice President and its staff; (10) Senior White House Advisor Jared Kushner; (11) Senior White House Advisor Stephen Miller; and (12) former House Speaker Newt Gingrich.

80. To assist the Department of State in its document search GAP identified the following individuals as likely to have responsive records: (1) former Secretary of State Tillerson; (2) former Special Representative for Afghanistan and Pakistan (“SRAP”) Management Officer JoAnne Arzt; (3) former Deputy Special Representative for Afghanistan and Pakistan Jonathan J. Carpenter; (4) former Deputy Chief of Staff Christine Ciccone; (5) former Chief of Staff to the Under Secretary Tim Davis; (6) NEA/SCA EX HR Specialist Paula Ehigiegba; (7) former Deputy Executive Secretary Dereck Hogan; (8) Policy Planning Director Brian Hook; (9) NEA-SCA/EX Deputy Director Suzanne Inzerillo; (10) former Near East Affairs Acting Assistant Secretary Stuart Jones; (11) Executive Secretary Lisa Kenna; (12) NEA/SCA EX HR Director Anthony Kleiber; (13) Policy Planning Deputy Director Edward Lacey; (14) Chief of Staff/Executive Assistant to the Deputy Secretary Gregory LoGerfo; (15) former Acting SRAP Laurel Miller; (16) Office Management Specialist Marilyn Manning; (17) S/ES-EX Executive Director Eric Nelson; (18) former Chief of Staff Margaret Peterlin; (19) NEA PDAS Joan Polaschik; (20) former Under Secretary for Political Affairs Thomas Shannon; (21) Executive Assistant Gregory Stanford; (22) International Organization Affairs Bureau Senior Advisor Mari Still; (23) NEA-SCA/EX Deputy Director Daniel Stoian; (24) Deputy Secretary John Sullivan; (25) former Acting Director General and Current Deputy Under Secretary for Management William Todd; (26) NEA-SCA/EX Director Howard Van Vranken;

and (27) SCA Senior Bureau Official and Principal Deputy Assistant Secretary of State Alice Wells.

81. GAP provided a separate list of individuals likely to have responsive, non-privileged documents that included: (1) Legal Advisor Jennifer Newstead; (2) Deputy Legal Advisor Kathleen Hooke; (3) Assistant Legal Advisor Alexandra Perina; (4) Attorney Advisor Anna Katherine Drake; (5) Attorney Advisor Katie Einspanier; (6) Attorney Advisor Julie Falls; (7) Attorney Advisor Jane Farrington; (8) Attorney Advisor Sarah Freuden; (9) Attorney Advisor David Gravalles; (10) Attorney Advisor Jaclyn Greenstein; (11) Attorney Advisor Elisabeth Liadis; (12) Attorney Advisor Marianne Periciacante; (13) Attorney Advisor Sarah Prosser; and (14) Attorney Advisor Marguerite Walter.

82. GAP also sought a waiver of fees associated with processing its request on the basis that disclosure of the requested documents is in the public interest as it would, *inter alia*, significantly enhance the public's understanding of the government's operations with respect to energy and foreign policy issues in the Middle East. GAP explained how each of the criteria in the Department of State's regulation concerning a fee waiver, 22 C.F.R. § 171.16, are satisfied.

83. On October 12, 2018, the Department of State contacted GAP seeking ways to reduce the scope of the State Department FOIA 2 and indicating that the Department of State had not yet begun processing the request. GAP did not agree to narrow its request.

84. By email dated February 13, 2019, the Department of State advised GAP that it was splitting State Department FOIA 2 into 12 separate requests corresponding to the numbered items in the request. To date, GAP has not received any further communications from the Department of State regarding this FOIA request.

CIA FOIA

85. On August 29, 2018, GAP submitted a FOIA request by facsimile to the CIA seeking documents and communications from January 20, 2017 to the present regarding: (1) civil nuclear cooperation with Middle Eastern countries, most notably Saudi Arabia; (2) the Middle East Marshall Plan; (3) negotiation of a U.S.-Saudi “123” Civil Nuclear Cooperation Agreement; (4) the IP3 Corporation and its proposal for nuclear and cyber cooperation with various Middle Eastern countries; and (5) Westinghouse, including its March 2017 bankruptcy and the subsequent policy response of the U.S. Government.

86. To help focus the CIA’s search for responsive records, GAP provided four categories of additional information. First, GAP identified the following agencies as likely to have corresponded with the CIA on the subjects of GAP’s request: the Department of State, the Department of Commerce, the Department of Defense, the Department of Energy, the Department of the Treasury, and the White House, including, *inter alia*, the National Security Council.

87. Second, GAP identified 18 White House staff likely to have been referenced in the requested documents and communications: (1) former NSC Executive Secretary Megan Badasch; (2) former NSC Senior Director Michael Bell; (3) former NSC Senior Advisor Caroline Berson; (4) NSC Legal Counsel John Eisenberg; (5) former NSC Director Mark Eshbaugh; (6) former National Security Advisor Michael Flynn; (7) former NSC Senior Director Chris Ford; (8) former NSC Senior Director Andrea Hall; (9) former NSC Senior Director Derek Harvey; (10) former NSC Chief of Staff Keith Kellogg; (11) Senior Advisor to the President Jared Kushner; (12) former Deputy National Security Advisor KT McFarland; (13) former National Security Advisor H.R. McMaster; (14) former NSC Gulf Director Sean Misko; (15)

former NSC Nonproliferation Director Sean Oehlbert; (16) former Deputy National Security Director Dina Powell; (17) former Deputy National Security Advisor Ricky Waddell; and (18) former NSC Ethics Counsel Marguerite Walter.

88. Third, GAP identified the following individuals at the IP3 Corporation for which the CIA would have correspondence: (1) Keith Alexander; (2) Michael (“Mike”) Hewitt; (3) Jack Keane; (4) Robert (“Bud”) McFarlane; (5) Stuart Solomon; and (6) Frances Fragos Townsend.

89. Fourth, GAP identified the following individuals at the CIA or categories most likely to have responsive information in their emails, archived documents, or other stored files: (1) former Director Mike Pompeo and his immediate staff, including Chief of Staff, Deputy Chief of Staff, and advisers; (2) the analytical staff assigned to the Middle East and Gulf issues; (3) the analytical staff assigned to the counterproliferation group; and (4) any other CIA employees involved in negotiations or discussions with Saudi Arabia regarding a potential 123 Nuclear Agreement.

90. GAP also sought a waiver of fees associated with processing its request on the basis that disclosure of the requested documents is in the public interest as it would, *inter alia*, significantly enhance the public’s understanding of the government’s operations with respect to energy and foreign policy issues in the Middle East. GAP explained how each of the criteria in the CIA’s regulation concerning a fee waiver, 32 C.F.R. § 1900.13(b)(2), are satisfied.

91. GAP also requested expedition of its request, explaining that the requested records were needed for a matter under review by the U.S. Congress and pertaining to a matter of significant public concern.

92. By letter dated September 11, 2018, the CIA acknowledged receipt on September 6, 2018, of the CIA FOIA and advised GAP's request for expedition was denied based on the CIA's assessment that GAP had not established a "compelling need" for the requested information.

93. On December 4, 2018, the CIA sent a second letter to GAP requesting clarification for item 1 of the request based on the CIA's claim that the request, as drafted, "lacks specificity or its [sic] too broad or records not configured that way to search for it." The CIA suggested as an example of clarification identifying which country or countries are providing civil nuclear cooperation to which other specific country or countries in the Middle East.

94. By letter dated January 8, 2019, GAP responded to the request for clarification. GAP clarified that its request for records regarding civil nuclear cooperation with Middle Eastern countries, most notably Saudi Arabia, should be interpreted to mean records regarding cooperation between the United States and one or more of the following: Egypt, Jordan, and Saudi Arabia. GAP further clarified that the term "civil nuclear cooperation" should be interpreted to mean any form of assistance regarding the acquisition of nuclear material, equipment, or technology by foreign countries; funds or financing to acquire nuclear material, equipment, or technology; and efforts by U.S. entities and persons to promote the acquisition of civilian nuclear reactors and related services by foreign countries.

95. To date, GAP has not received any further communications from the CIA regarding its FOIA request.

Department of Commerce FOIA

96. On September 7, 2018, GAP submitted a FOIA request to the Department of Commerce seeking documents and communications from January 20, 2017 to the present

regarding: (1) civil nuclear cooperation with Middle Eastern countries, most notably Saudi Arabia; (2) the Middle East Marshall Plan; (3) negotiation of a U.S.-Saudi “123” Civil Nuclear Cooperation Agreement; (4) the IP3 Corporation and its proposal for nuclear and cyber cooperation with various Middle Eastern countries; and (5) Westinghouse, including its March 2017 bankruptcy and the subsequent policy response of the U.S. Government.

97. To help focus the Department of Commerce’s search for responsive records, GAP provided four categories of additional information. First, GAP identified the following agencies as likely to have corresponded with the Department of Commerce on the subjects of GAP’s request: the Department of State, the Department of Defense, the CIA, the Department of Energy, the Department of the Treasury, and the White House, including, *inter alia*, the National Security Council.

98. Second, GAP identified 18 White House staff likely to have been referenced in the requested documents and communications: (1) former NSC Executive Secretary Megan Badasch; (2) former NSC Senior Director Michael Bell; (3) former NSC Senior Advisor Caroline Berson; (4) NSC Legal Counsel John Eisenberg; (5) former NSC Director Mark Eshbaugh; (6) former National Security Advisor Michael Flynn; (7) former NSC Senior Director Chris Ford; (8) former NSC Senior Director Andrea Hall; (9) former NSC Senior Director Derek Harvey; (10) former NSC Chief of Staff Keith Kellogg; (11) Senior Advisor to the President Jared Kushner; (12) former Deputy National Security Advisor K.T. McFarland; (13) former National Security Advisor H.R. McMaster; (14) former NSC Gulf Director Sean Misko; (15) former NSC Nonproliferation Director Sean Oehlbert; (16) former Deputy National Security Director Dina Powell; (17) former Deputy National Security Advisor Ricky Waddell; and (18) former NSC Ethics Counsel Marguerite Walter.

99. Third, GAP identified the following individuals at the IP3 Corporation for which Commerce would have correspondence: (1) Keith Alexander; (2) Michael (“Mike”) Hewitt; (3) Jack Keane; (4) Robert (“Bud”) McFarlane; (5) Stuart Solomon; and (6) Frances Fragos Townsend.

100. Fourth, GAP identified the following individuals at the Department of Commerce or categories of individuals most likely to have responsive information in their emails, archived documents, or other stored files: (1) Secretary Wilbur Ross and his immediate staff, including Chief of Staff, Deputy Chief of Staff, and advisers; and (2) any other Department of Commerce employees involved in negotiations or discussions with Saudi Arabia regarding a potential 123 Nuclear Agreement.

101. GAP also sought a waiver of fees associated with processing its request on the basis that disclosure of the requested documents is in the public interest as it would, *inter alia*, significantly enhance the public’s understanding of the government’s operations with respect to energy and foreign policy issues in the Middle East. GAP explained how each of the criteria in the Department of Commerce’s regulation concerning a fee waiver, 15 C.F.R. § 4.11(l)(1)-(3), are satisfied.

102. GAP also requested expedition of its requests, explaining that the requested records were needed for a matter under review by the U.S. Congress and pertaining to a matter of significant public concern.

103. By email dated September 18, 2018, the Department of Commerce acknowledged receipt of GAP’s request and advised the request was in the Department of Commerce’s online FOIA system.

104. To date, GAP has not received any further communications from the Department of Commerce regarding its FOIA request.

Department of the Treasury FOIAs

105. On August 29, 2018, GAP submitted a FOIA request by facsimile to the Department of the Treasury seeking documents and communications from January 20, 2017 to the present regarding: (1) civil nuclear cooperation with Middle Eastern countries, most notably Saudi Arabia; (2) the Middle East Marshall Plan; (3) negotiation of a U.S.-Saudi “123” Civil Nuclear Cooperation Agreement; (4) the IP3 Corporation and its proposal for nuclear and cyber cooperation with various Middle Eastern countries; and (5) Westinghouse, including its March 2017 bankruptcy and the subsequent policy response of the U.S. Government.

106. To help focus the Department of the Treasury’s search for responsive records, GAP provided four categories of additional information. First, GAP identified the following agencies as likely to have corresponded with the Department of the Treasury on the subjects of GAP’s request: the Department of State, the Department of Defense, the CIA, the Department of Energy, the Department of Commerce, and the White House, including, *inter alia*, the National Security Council.

107. Second, GAP identified 18 White House staff likely to have been referenced in the requested documents and communications: (1) former NSC Executive Secretary Megan Badasch; (2) former NSC Senior Director Michael Bell; (3) former NSC Senior Advisor Caroline Berson; (4) NSC Legal Counsel John Eisenberg; (5) former NSC Director Mark Eshbaugh; (6) former National Security Advisor Michael Flynn; (7) former NSC Senior Director Chris Ford; (8) former NSC Senior Director Andrea Hall; (9) former NSC Senior Director Derek Harvey; (10) former NSC Chief of Staff Keith Kellogg; (11) Senior Advisor to the President

Jared Kushner; (12) former Deputy National Security Advisor K.T. McFarland; (13) former National Security Advisor H.R. McMaster; (14) former NSC Gulf Director Sean Misko; (15) former NSC Nonproliferation Director Sean Oehlbert; (16) former Deputy National Security Director Dina Powell; (17) former Deputy National Security Advisor Ricky Waddell; and (18) former NSC Ethics Counsel Marguerite Walter.

108. Third, GAP identified the following individuals at the IP3 Corporation for which the Department of the Treasury would have correspondence: (1) Keith Alexander; (2) Michael (“Mike”) Hewitt; (3) Jack Keane; (4) Robert (“Bud”) McFarlane; (5) Stuart Solomon; and (6) Frances Fragos Townsend.

109. Fourth, GAP identified the following individuals at the Department of the Treasury or categories of individuals most likely to have responsive information in their emails, archived documents, or other stored files: (1) Secretary Steven Mnuchin and his immediate staff, including Chief of Staff, Deputy Chief of Staff, and advisers; and (2) any other Treasury employees involved in negotiations or discussions with Saudi Arabia regarding a potential 123 Nuclear Agreement.

110. GAP also sought a waiver of fees associated with processing its request on the basis that disclosure of the requested documents is in the public interest as it would, *inter alia*, significantly enhance the public’s understanding of the government’s operations with respect to energy and foreign policy issues in the Middle East. GAP explained how each of the criteria in the Department of the Treasury’s regulation concerning a fee waiver, 31 C.F.R. § 1.7(d)(1), are satisfied.

111. GAP also requested expedition of its request, explaining that the requested records were needed for a matter under review by the U.S. Congress and pertaining to a matter of significant public concern.

112. On August 31, 2018, GAP sent an identical FOIA request to the Department of the Treasury by first-class mail.

113. By letter dated September 27, 2018, and sent by email, the Department of the Treasury advised GAP that the Department of the Treasury had initiated a search for responsive records. The Department of the Treasury further claimed unusual circumstances existed that would require an additional processing extension of 10 days.

114. To date, GAP has not received any further communications from the Department of the Treasury regarding its FOIA requests.

Department of Defense FOIAs

115. On August 29, 2018, GAP submitted a FOIA request by facsimile to the Department of Defense seeking documents and communications from January 20, 2017 to the present regarding: (1) civil nuclear cooperation with Middle Eastern countries, most notably Saudi Arabia; (2) the Middle East Marshall Plan; (3) negotiation of a U.S.-Saudi “123” Civil Nuclear Cooperation Agreement; (4) the IP3 Corporation and its proposal for nuclear and cyber cooperation with various Middle Eastern countries; and (5) Westinghouse, including its March 2017 bankruptcy and the subsequent policy response of the U.S. Government.

116. To help focus the Department of Defense’s search for responsive records, GAP provided four categories of additional information. First, GAP identified the following agencies as likely to have corresponded with the Department of Defense on the subjects of GAP’s request: the Department of State, the Department of Commerce, the CIA, the Department of Energy, the

Department of the Treasury, and the White House, including, *inter alia*, the National Security Council.

117. Second, GAP identified 18 White House staff likely to have been referenced in the requested documents and communications: (1) former NSC Executive Secretary Megan Badasch; (2) former NSC Senior Director Michael Bell; (3) former NSC Senior Advisor Caroline Berson; (4) NSC Legal Counsel John Eisenberg; (5) former NSC Director Mark Eshbaugh; (6) former National Security Advisor Michael Flynn; (7) former NSC Senior Director Chris Ford; (8) former NSC Senior Director Andrea Hall; (9) former NSC Senior Director Derek Harvey; (10) former NSC Chief of Staff Keith Kellogg; (11) Senior Advisor to the President Jared Kushner; (12) former Deputy National Security Advisor K.T. McFarland; (13) former National Security Advisor H.R. McMaster; (14) former NSC Gulf Director Sean Misko; (15) former NSC Nonproliferation Director Sean Oehlbert; (16) former Deputy National Security Director Dina Powell; (17) former Deputy National Security Advisor Ricky Waddell; and (18) former NSC Ethics Counsel Marguerite Walter.

118. Third, GAP identified the following individuals at the IP3 Corporation for which the Department of Defense would have correspondence: (1) Keith Alexander; (2) Michael (“Mike”) Hewitt; (3) Jack Keane; (4) Robert (“Bud”) McFarlane; (5) Stuart Solomon; and (6) Frances Fragos Townsend.

119. Fourth, GAP identified the following individuals at the Department of Defense or categories of individuals most likely to have responsive information in their emails, archived documents, or other stored files: (1) then-Secretary Jim Mattis and his immediate staff, including Chief of Staff, Deputy Chief of Staff, and advisers; (2) Deputy Secretary Patrick Shanahan and

his immediate staff; and (3) any other Department of Defense employees involved in negotiations or discussions with Saudi Arabia regarding a potential 123 Nuclear Agreement.

120. GAP also sought a waiver of fees associated with processing its request on the basis that disclosure of the requested documents is in the public interest as it would, *inter alia*, significantly enhance the public's understanding of the government's operations with respect to energy and foreign policy issues in the Middle East. GAP explained how each of the criteria in the Department of Defense's regulation concerning a fee waiver, 32 C.F.R. § 286.12(l)(2), are satisfied.

121. GAP also requested expedition of its request, explaining that the requested records were needed for a matter under review by the U.S. Congress and pertaining to a matter of significant public concern.

122. On August 31, 2018, GAP sent an identical FOIA request to the Department of Defense by first-class mail.

123. By letter dated September 12, 2018, the Department of Defense's Office of Freedom of Information provided an interim response to GAP that noted it processed only requests for the Office of the Secretary of Defense and the Joint Staff. The Department of Defense further noted that unusual circumstances existed as defined by the FOIA that impacted its ability to quickly process GAP's request. The letter further advised GAP its request for expedited processing was denied on the ground that GAP had not clearly demonstrated how the information would lose its value if not processed on an expedited basis. Finally, the Department of Defense advised that GAP's request had been placed in its complex processing queue.

124. By letter dated September 25, 2018, GAP requested reconsideration of the Department of Defense's determination that the request did not justify expedited processing. GAP

explained that the requested information, which concerns the so-called Middle East Marshall Plan and was touted by the IP3 Corporation and heavily lobbied within the Department of Defense and the White House, is of compelling public interest and is necessary for Congress, the Executive Branch, and the public to make an informed decision regarding this plan to sell nuclear technology to Middle East countries.

125. GAP's September 25, 2018 letter also explained how the request was specifically tailored to records in specific offices and GAP had provided names to enable the Department of Defense to readily search for responsive records. GAP also pointed out that the documents likely are entirely in electronic form, making a physical search for paper records unnecessary. Accordingly, none of the unusual circumstances apply to justify a delay beyond the FOIA's 20-day statutory time period.

126. To date, GAP has not received any further communications from the Department of Defense regarding its FOIA requests including, *inter alia*, any response to its request for reconsideration.

Department of Energy FOIAs

127. On August 29, 2018, GAP submitted a FOIA request by facsimile to the Department of Energy seeking documents and communications from January 20, 2017 to the present regarding: (1) civil nuclear cooperation with Middle Eastern countries, most notably Saudi Arabia; (2) the Middle East Marshall Plan; (3) negotiation of a U.S.-Saudi "123" Civil Nuclear Cooperation Agreement; (4) the IP3 Corporation and its proposal for nuclear and cyber cooperation with various Middle Eastern countries; and (5) Westinghouse, including its March 2017 bankruptcy and the subsequent policy response of the U.S. Government.

128. To help focus the Department of Energy's search for responsive records, GAP provided four categories of additional information. First, GAP identified the following agencies as likely to have corresponded with the Department of Energy on the subjects of GAP's request: the Department of State, the Department of Commerce, the Department of Defense, the CIA, the Department of the Treasury, and the White House, including, *inter alia*, the National Security Council.

129. Second, GAP identified 18 White House staff likely to have been referenced in the requested documents and communications: (1) former NSC Executive Secretary Megan Badasch; (2) former NSC Senior Director Michael Bell; (3) former NSC Senior Advisor Caroline Berson; (4) NSC Legal Counsel John Eisenberg; (5) former NSC Director Mark Eshbaugh; (6) former National Security Advisor Michael Flynn; (7) former NSC Senior Director Chris Ford; (8) former NSC Senior Director Andrea Hall; (9) former NSC Senior Director Derek Harvey; (10) former NSC Chief of Staff Keith Kellogg; (11) Senior Advisor to the President Jared Kushner; (12) former Deputy National Security Advisor K.T. McFarland; (13) former National Security Advisor H.R. McMaster; (14) former NSC Gulf Director Sean Misko; (15) former NSC Nonproliferation Director Sean Oehlbert; (16) former Deputy National Security Director Dina Powell; (17) former Deputy National Security Advisor Ricky Waddell; and (18) former NSC Ethics Counsel Marguerite Walter.

130. Third, GAP identified the following individuals at the IP3 Corporation for which the Department of Energy would have correspondence: (1) Keith Alexander; (2) Michael ("Mike") Hewitt; (3) Jack Keane; (4) Robert ("Bud") McFarlane; (5) Stuart Solomon; and (6) Frances Fragos Townsend.

131. Fourth, GAP identified the following individuals at the Department of Energy or categories of individuals most likely to have responsive information in their emails, archived documents, or other stored files: (1) Secretary Rick Perry and his immediate staff, including Chief of Staff, Deputy Chief of Staff, and advisers; (2) any other Department of Energy employees involved in negotiations or discussions with Saudi Arabia regarding a potential 123 Nuclear Agreement.

132. GAP also sought a waiver of fees associated with processing its request on the basis that disclosure of the requested documents is in the public interest as it would, *inter alia*, significantly enhance the public's understanding of the government's operations with respect to energy and foreign policy issues in the Middle East. GAP explained how each of the criteria in the Department of Energy's regulation concerning a fee waiver, 10 C.F.R. § 1004.9(a)(8), are satisfied.

133. GAP also requested expedition of its request, explaining that the requested records were needed for a matter under review by the U.S. Congress and pertaining to a matter of significant public concern.

134. On August 31, 2018, GAP sent an identical FOIA request to the Department of Energy by first-class mail.

135. To date, GAP has not received any communications from the Department of Energy regarding its FOIA requests.

PLAINTIFF'S CLAIMS FOR RELIEF

CLAIM ONE (Department of State's Wrongful Withholding of Agency Records)

136. Plaintiff repeats and re-alleges paragraphs 1-135.

137. Plaintiff properly asked for records within the custody and control of the

Department of State.

138. Defendant Department of State wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request

139. Plaintiff has exhausted all applicable administrative remedies with respect to its requests of the Department of State.

140. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

CLAIM TWO
(CIA's Wrongful Withholding of Agency Records)

141. Plaintiff repeats and re-alleges paragraphs 1-135.

142. Plaintiff properly asked for records within the custody and control of the CIA.

143. Defendant CIA wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request

144. Plaintiff has exhausted all applicable administrative remedies with respect to its request of the CIA.

145. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

CLAIM THREE
(Department of Commerce's Wrongful Withholding of Agency Records)

146. Plaintiff repeats and re-alleges paragraphs 1-135.

147. Plaintiff properly asked for records within the custody and control of the Department of Commerce.

148. Defendant Department of Commerce wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request

149. Plaintiff has exhausted all applicable administrative remedies with respect to its request of the Department of Commerce.

150. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

CLAIM FOUR

(Department of the Treasury's Wrongful Withholding of Agency Records)

151. Plaintiff repeats and re-alleges paragraphs 1-135.

152. Plaintiff properly asked for records within the custody and control of the Department of the Treasury.

153. Defendant Department of the Treasury wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request

154. Plaintiff has exhausted all applicable administrative remedies with respect to its request of the Department of the Treasury.

155. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

CLAIM FIVE

(Department of Defense's Wrongful Withholding of Agency Records)

156. Plaintiff repeats and re-alleges paragraphs 1-135.

157. Plaintiff properly asked for records within the custody and control of the Department of Defense.

158. Defendant Department of Defense wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request

159. Plaintiff has exhausted all applicable administrative remedies with respect to its request of the Department of Defense.

160. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

CLAIM SIX
(Department of Energy's Wrongful Withholding of Agency Records)

161. Plaintiff repeats and re-alleges paragraphs 1-135.

162. Plaintiff properly asked for records within the custody and control of the Department of Energy.

163. Defendant Department of Energy wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request

164. Plaintiff has exhausted all applicable administrative remedies with respect to its request of the Department of Energy.

165. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, plaintiff respectfully requests that this Court:

(1) Order defendants Department of State, CIA, Department of Commerce,

Department of the Treasury, Department of Defense, and Department of Energy to immediately and fully process plaintiff's FOIA requests and disclose all non-exempt documents immediately to plaintiff;

- (2) Issue a declaration that plaintiff is entitled to immediate processing and disclosure of the requested records;
- (3) Provide for expeditious proceedings in this action;
- (4) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
- (5) Award plaintiff its costs and reasonable attorneys' fees in this action; and
- (6) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



Anne L. Weismann
(D.C. Bar No. 298190)
Conor Shaw
(D.C. Bar No. 1032074)
Citizens for Responsibility and Ethics
in Washington
1101 K Street, N.W., Suite 201
Washington, D.C. 20005
Phone: (202) 408-5565
Facsimile: (202) 588-5020
aweismann@citizensforethics.org

Thomas Devine
(D.C. Bar No. 357202)
Government Accountability Project
1612 K Street, N.W., Suite 1100
Washington, D.C. 20006
Phone: (202) 457-0034
TomD@whistleblower.org

Dated: February 22, 2019

Attorneys for Plaintiff